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JUL 20 2001 DJ
AT SEATTLE
CLERK U S DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

THE HONORABLE BARBARA JACOBS ROTHSTEIN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENYATTO ALLAH and GREGORY LEWIS,)

Plaintiffs,)

v.)

CITY OF SEATTLE, et al.,)

Defendants.)

NO C00-1061R

PLAINTIFFS' PRE-TRIAL STATEMENT

I. FEDERAL JURISDICTION

This Court has personal and subject matter jurisdiction over plaintiffs' federal civil rights claims under 28 U S C §§ 1331, 1343, 2201, and 2202, and pendent jurisdiction over their state-law claims and over defendants under 28 U S.C. § 1367 Venue is proper in the Western District of Washington under 28 U S C § 1391(b) and (c)

II. PLAINTIFFS' CLAIMS FOR RELIEF

Plaintiffs' intend to pursue the following claims for relief against Officer Ronald Martin of the Seattle Police Department (1) violations of the Fourth and Fourteenth Amendments of the United States Constitution, for unreasonable seizures, excessive force, and arrest without probable cause; (2) violations of the First and Fourteenth Amendments of the United States Constitution, for denial of right to exercise free speech; (3) assault, (4) battery, (5) false arrest; (6) tort of outrage, and (7) punitive damages.



CV 00-01061 #00000107

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III. RELEVANT & NON DISPUTED FACTS

On November 26, 1997, Kenyatto Allah ("Kenyatto") was teaching at the Teen Life Center, adjacent to Garfield Community High School, when several officers entered the facility and forcibly removed two juveniles from his class. When Kenyatto asked for the officers to identify themselves, and explain their conduct, they refused. Kenyatto followed them outside, approached and spoke to Officer Martin. Omari Tahir intervened in the encounter between Officer Martin and Kenyatto. Officer Martin admits that he had an encounter with someone at the Teen Life Center, and that when he has an encounter he remembers the person. As a result of the conduct of the officers, including Officer Martin's, Gregory Lewis ("Gregory"), using the last name Jackson, filed a formal complaint on Kenyatto's behalf with the Seattle Police Department. Kenyatto and Omari Tahir spoke directly to Assistant Chief Diaz (formerly Captain) and Director Bailey (formerly Lieutenant) about the incident and Officer Martin.

A Seattle Police Department investigator called and spoke to Officer Martin about the incident. Assistant Chief Diaz asked Director Bailey to look into complaints he had heard about Officer Martin. In his personal vehicle, Director Bailey monitored Officer Martin while he was on duty.

On September 20, 1998, Kenyatto, Gregory, and two other friends, were exercising in their bare feet, in a park adjacent to the Garfield Community Center. Kenyatto saw Officer Martin, who drove up in his patrol vehicle and made eye contact with Kenyatto minutes before a car crashed at the intersection of 23rd and Cherry St. Kenyatto told Gregory, who looked in the direction of the police car, of the officer's presence. Officer Martin admits he was patrolling the area before the crash.

Kenyatto, Gregory, and their two friends, heard the crash and immediately went to assist. Job Melton, who was talking to a friend outside his house, heard the crash and called 911. His friend ran to assist at the crash. Job described what he saw to 911 dispatch, and then went to assist. Kenyatto entered the car to assist the only occupant, an injured young man, who was trapped in the passenger seat and pinned against the dash board. Kenyatto pulled the injured passenger's seat back, talked to him, and

1 tilted his head so he could breath. Gregory also talked to him and attempted to loosen his seat belt
2 Job's friend entered the car and cut the injured passenger's seat belt. As medics began to arrive,
3 Gregory told Kenyatto. Kenyatto immediately began to exit the rear of the car "seat" first Gregory and
4 Job's friend also moved away from the car

5 Officer Martin was the first officer at the scene, arriving within seconds of receiving the call
6 from dispatch. Officer Martin knew from dispatch that two juveniles had fled the crash, and had no
7 basis to believe that Kenyatto was one of those juveniles Kenyatto and Gregory are not juveniles
8 Officer Martin pulled up behind the crashed car as Kenyatto exited it.

9 Without asking a single question of either the onlookers or Kenyatto, Officer Martin engaged
10 Kenyatto, and forcibly restrained him against the hood of the crashed car Officer Martin admits
11 arresting Kenyatto for auto theft Onlookers, Job Melton, and the gentlemen that cut the injured
12 passenger's seat belt, immediately told Officer Martin that Kenyatto was just helping the injured
13 passenger.

14 Officer Williams, the second officer to arrive at the scene, then pulled up in front of the crashed
15 car. Officer Williams admits that, when he arrived, Officer Martin was already beside the crashed car
16 with Kenyatto He approached Officer Martin to assist – and heard the onlookers yelling that Kenyatto
17 was just trying to help. Believing what he heard, Officer Williams spoke to Officer Martin. Officers
18 Martin and Williams subsequently let Kenyatto go. Neither officer gave Kenyatto a command at this
19 time. Kenyatto then walked back towards where the crowd of onlookers had gathered. He did not run
20 Officer Martin admits that he still had not asked Kenyatto a single question at this point

21 Gregory then approached Officer Williams beside the crashed car, and explained he and
22 Kenyatto were just helping the injured man Officer Martin was within four feet of this entire discussion.
23 Officer Williams and Gregory talked for a few minutes.

24 Then, Officer Martin yelled and rushed towards Kenyatto Having just explained the situation to
25 Officer Williams within earshot of Officer Martin, Gregory ran along side Officer Martin and reiterated

1 that they were just trying to help Officer Martin admits that he initiated physical contact with Gregory.
 2 Officer Martin engaged Gregory.

3 Both Kenyatto and Gregory were forcibly arrested, jailed and then prosecuted for resisting arrest,
 4 obstructing and assaulting an officer. They were never charged or prosecuted for auto theft. They were
 5 acquitted of all charges, except the jury hung on Kenyatto's resisting arrest charge. It is undisputed that
 6 the only reason Kenyatto and Gregory went to the scene of the crash was to help the injured passenger

7 **IV. PLAINTIFFS' SUMMARY FACTUAL CONTENTIONS**

8 1. While disregarding the totality of the circumstances surrounding the crash, Defendant
 9 Martin violated Kenyatto's and Gregory's right to be free from unreasonable seizures, excessive force,
 10 and arrest without probable cause, falsely arrested, committed the tort of outrage, and assaulted and
 11 battered each of them, when he: (a) without asking a single question, seized Kenyatto as he exited the
 12 car, twisted his arm behind his back, picked him up off the ground, slammed him face first against the
 13 hood, and arrested him for auto theft, causing injuries for which Kenyatto is entitled to damages, and (b)
 14 grabbed Gregory by the throat without provocation, picked him off the ground by neck, slammed him
 15 against a retaining wall, choked him, threw him to the ground, arrested him, and caused injuries for
 16 which Gregory is entitled to damages

17 2 In retaliation, Defendant Martin violated Kenyatto's and Gregory's right to exercise free
 18 speech, when he: (a) with knowledge of Kenyatto's formal complaint against him concerning the Teen
 19 Life Center, and other prior confrontations between them, seized and arrested Kenyatto as described in
 20 item 1(a) above, causing injuries for which Kenyatto is entitled to damages; and (b) with no basis to
 21 suspect Gregory of committing a crime, seized Gregory by the neck as described in item 1(b) above for
 22 yelling that he and Kenyatto were just trying to help the injured man, placed Gregory in a life
 23 threatening unprovoked choke hold, threw him to the ground, and caused injuries for which Gregory is
 24 entitled to damages

25 ///

V. ISSUES OF LAW

1. Whether Defendant Martin can claim qualified immunity if the facts viewed in Plaintiffs' favor indicate constitutional violations of Plaintiffs' rights, and, if so, whether those rights were clearly established such that it would be clear to a reasonable officer that Defendant Martin's conduct was unlawful

2. Whether a finding of probable cause with respect to Defendant Martin's first seizure and arrest of Kenyatto, and first seizure and arrest of Gregory, precludes Plaintiffs' First Amendment Claim

VI. WITNESSES

Name	Address	Nature of Testimony	Designation
Allah, Kenyatto	2306 E. Madison, #119 Seattle, WA 98112 T: 206-568-3499	The 11/26/97 incident, prior contact with Officer Martin, and the factual circumstances of the 9/20/98 crash	Will Testify
Bailey, Harold	610 – 3 rd Avenue Seattle, WA 98104 T. 206-684-5520	Knowledge of and communications with plaintiffs and Asst. Chief Diaz concerning Officer Martin	Possible Witness Only
Barnes, Anthony	2509 E. Cherry St. Seattle, WA 98122 T 206-442-9233	Factual circumstances surrounding the 9/20/98 crash	Possible Witness Only
Emery, Anna	610 – 3 rd Avenue Seattle, WA 98104 T 206-684-5520	Factual circumstances of 9/20/98 incident, discussions with officers at scene, and Use of Physical Force Report authored	Will Testify
Garrett, Kwami	Address unknown T: 917-806-4496	Factual circumstances of the 11/26/97 incident, and other contacts between Kenyatto and Officer Martin	Possible Witness Only
Garrett, James - aka - Tahir, Omari	King County Jail	Factual circumstances of the 11/26/97 incident, and communications with Director Bailey and Assist Chief Diaz concerning Officer Martin	Possible Witness Only
Guballa, Vincent	610 – 3 rd Avenue	Investigation into charges against	Possible

Name	Address	Nature of Testimony	Designation
	Seattle, WA 98104 T: 206-684-5520	Kenyatto and Gregory, discussions with officers, various SPD forms prepared	Witness Only
Haviland, Ronald	610 – 3 rd Avenue Seattle, WA 98104 T. 206-684-5520	Factual circumstances of the 9/20/98 incident, and SPD statements	Will Testify
Holmes Neshawn	5409 – 35 th Ave S Seattle, WA 98118 T: 206-721-5841	Kenyatto's emotional and physical well being following the 9/20/98 incident	Will Testify
Hunter, "Che" Danavian	412 E Novak Lane, Apt. C-304 Kent, WA 98032 T: 253-856-3205	Personal experience with Officer Martin where Kenyatto was present	Possible Witness Only
Johnson, James	610 – 3 rd Avenue Seattle, WA 98104 T: 206-684-5520	Concerning transcription of call to 911 and East Dispatch re incident 98-401683	Possible Witness Only
Lawson, Gene	610 – 3 rd Avenue Seattle, WA 98104 T. 206-684-8640	Concerning CAD system codes, operating, and logging	Possible Witness Only
Leavell, Ronald	610 – 3 rd Avenue Seattle, WA 98104 T: 206-684-5520	Letters authored concerning IIS 98-0226	Possible Witness Only
Lewis, Gregory	907 E. Pine, PMB#138 Seattle, WA 98122 T 206-715-8253	The 11/26/97 incident, prior contact with Officer Martin, and the factual circumstances of the 9/20/98 crash	Will Testify
Martin, Ronald	610 – 3 rd Avenue Seattle, WA 98104 T: 206-684-5520	Factual circumstances of the 11/26/97, 9/20/98 incidents, contact with plaintiffs, and SPD statements	Will Testify
McThomas, Linda	1806 – 23 rd Ave, #3 Seattle, WA 98122 T. 206-720-0765	Kenyatto's emotional and physical well being following the 9/20/98 incident	Possible Witness Only
McKinnon, William	2323 E. Cherry Seattle, WA 98122	Factual circumstances surrounding the 9/20/98 crash	Will Testify

Name	Address	Nature of Testimony	Designation
	T. 206-684-4788		
Melton, Job	542 25 th Ave Seattle, WA 98122 T. 206-248-6983	Factual circumstances surrounding the 9/20/98 crash	Will Testify
Nakanishi, Ryan	2820 S. Myrtle St. Seattle, WA 98108 T. 206-386-1921	Factual circumstances surrounding the 9/20/98 crash	Will Testify
Navarro, Amilcar	814 30 th Avenue Seattle, WA 98106 T: 206-683-7836	Factual circumstances surrounding the 9/20/98 crash	Possible Witness Only
Newton, Jennifer	903 9 th Avenue #34 Seattle, WA T. 206-749-5020	Concerning the authenticity of the video tape of the incident area. Allah document S0722	Possible Witness Only
Pomper, Steven	610 – 3 rd Avenue Seattle, WA 98104 T: 206-684-5520	Factual circumstances of the 9/20/98 incident, and SPD statements	Will Testify
Rodgers, Jeffrey	610 – 3 rd Avenue Seattle, WA 98104 T: 206-684-5520	Factual circumstances of the 9/20/98 incident, and SPD statements	Will Testify
Schroeder, Robert	915 2 nd Ave., 28 th flr. Seattle, WA 98174 T: 206-220-4477	Plaintiffs' damages resulting from being subjected to criminal prosecution	Will Testify
Stoltz, Aaron	610 – 3 rd Avenue Seattle, WA 98104 T 206-684-5520	Factual circumstances of the 9/20/98 incident, and SPD statements	Will Testify
Williams, Gregory	610 – 3 rd Avenue Seattle, WA 98104 T: 206-684-5520	Factual circumstances of the 9/20/98 incident, and SPD statements	Will Testify
Wingstrand, Brent	610 – 3 rd Avenue Seattle, WA 98104 T. 206-684-5520	Letters authored concerning LI 97-0278	Possible Witness Only


VII. EXHIBITS

No.	Description
1	Copwatch Case Interview Form re Teen Life Center Incident on 11/26/97
2	Complaint filed by G Jackson (Lewis) re Teen Life Center incident on 11/26/97 (still not produced by defendants)
3	Cpt. B. Wingstrand's letter to G. Jackson (Lewis) re LI 97-0278, dated 2/26/98
4	SPD's Event History Summary ("CAD Sheet") re incident 98-401683
5	Transcript of 911 and East Dispatch calls re incident 98-401683, from 9/20/98
6	Off R. Martin's written stmt, dated 9/20/98
7	Off R. Martin's Incident Report, dated 9/20/98
8	Off. G. Williams' written stmt, dated 9/20/98
10	Off. A. Stoltz's written stmt, dated 9/20/98
11	Off. J. Rodgers' typed stmt, dated 9/20/98
12	Off. R. Haviland's typed, dated 9/20/98
13	Off. S. Pomper's written stmt, dated 9/20/98
14	Off. G. Williams' Traffic Collision report, dated 9/20/98
15	Sgt. A. Emery's, Use of Physical Force Report, dated 9/20/98
16	Off. R. Martin's typed stmt., dated 9/23/98
17	Det V. Guballa's Case Report, dated 9/24/98
18	Det. V. Guballa's, Cert. for Determination of Probable Cause, dated 9/24/98
19	Det. V. Guballa's Follow up Report, dated 9/24/98
20	Lt R. Leavell's letter to G. Jackson (Lewis) re IIS 98-0226, dated 10/05/98
21	Lt. R. Leavell's letter to G. Jackson (Lewis) re IIS 98-0226, dated 2/02/98 ([sic] '99)
	riminal trial - McKinnon
23	Certified Transcript from Plaintiffs' criminal trial - Melton
24	Certified Transcript from Plaintiffs' criminal trial - Martin
25	Certified Transcript from Plaintiffs' criminal trial - Williams
26	Certified Transcript from Plaintiffs' criminal trial - Nakanishi
27	Certified Transcript from Plaintiffs' criminal trial - Stoltz
28	Certified Transcript from Plaintiffs' criminal trial - Rodgers
29	Certified Transcript from Plaintiffs' criminal trial - Emery
30	Certified Transcript from Plaintiffs' criminal trial - Robinson
31	Certified Transcript from Plaintiffs' criminal trial - Barnes
32	Certified Transcript from Plaintiffs' criminal trial - Nguyen
33	Certified Transcript from Plaintiffs' criminal trial - McThomas (Allah)
34	Certified Transcript from Plaintiffs' criminal trial - Lewis
35	Photos of incident site from criminal proceedings - Plaintiff Ex #1 (Admitted)
36	Photos of incident site from criminal proceedings - Plaintiff Ex #2 (Admitted)
37	Photos of incident site from criminal proceedings - Plaintiff Ex #3 (Admitted)

No.	Description
39	Photos of incident site from criminal proceedings - Plaintiff Ex #10 (Admitted)
40	Photos of incident site from criminal proceedings - Plaintiff Ex #12 (Admitted)
41	Photos of incident site from criminal proceedings - Plaintiff Ex #8 (Off/Wdrn)
42	Photos of incident site from criminal proceedings - Plaintiff Ex #9 (Off/Wdrn)
43	Photos of incident site from criminal proceedings - Plaintiff Ex #11 (Off/Wdrn)
44	Photos of incident site from criminal proceedings - Plaintiff Ex #13 (Off/Wdrn)
45	SPD Policies and Procedures - Use of Force Regs., Chapter 145, Secs. 1 145 and 1 149
46	Seattle Municipal Code, SPD Officers' Bill of Rights (selected portions)
47	Illustrative diagram of incident area
48	Aerial photograph of incident area
49	Enshin Karate Dojo Kun Creed of Ethics
50	Videotape of incident area - Allah document S0722
51	Defendants' Resps. to Plaintiffs' First Set of Discovery, dated 1/02/01
52	Defendants' 1 st Supp. Resps. to Plaintiffs' First Set of Discovery, dated 2/14/01
53	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 3/20/01
54	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/14/01 - Martin
55	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/14/01 - Williams
56	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/14/01 - Pomper
57	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/16/01 - Rodgers
58	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/16/01 - Wong
58	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/16/01 - Stoltz
60	Defendants' 2 nd Supp. Resps. to Plaintiffs' First Set of Discovery, dated 5/21/01 - Haviland
61	Defendants' Resps. to Plaintiffs' Second Set of Discovery, dated 1/02/01
62	Defendants' Supp. Resps. to Plaintiffs' Second Set of Discovery, dated 2/12/01

DATED this 20th day of July, 2001 at Seattle, Washington

DORSEY & WHITNEY LLP



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CC TO JUDGE ~~DJ~~

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KENYATTO ALLAH and GREGORY LEWIS,)
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Defendants.)

NO. C00-1061R

CERTIFICATE OF SERVICE


I, Leshe D. Teves, certify that on July 20, 2001, I caused to be delivered by messenger, a true copy of the following document.

1. Plaintiffs' Pre-Trial Statement
2. Certificate of Service

in the above captioned matter addressed to:

Stephen P. Larson
Theron Buck
Stafford Frey Cooper
2500 Rainier Tower
1301 Fifth Avenue
Seattle, WA 98101-2621

DATED this 20th day of July, 2001, at Seattle, Washington


Leslie D. Teves

CERTIFICATE OF SERVICE - 1

ORIGINAL

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